

---

THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

---

CARL A. JACOBSON,

Plaintiff,

v.

SHON ROPER, et al.,

Defendants.

**MEMORANDUM DECISION  
AND ORDER DENYING MOTION  
FOR EXTENSION OF TIME  
AND  
ORDER EXTENDING TIME TO  
FILE MOTION TO SUBSTITUTE  
PARTY**

Case No. 4:19-cv-00043-DN-PK

District Judge David Nuffer  
Magistrate Judge Paul Kohler

---

Robert B. Sykes (counsel for deceased Plaintiff Carl A. Jacobson)<sup>1</sup> filed a motion seeking extension of time to file a motion under [FED. R. CIV. P. 25\(a\)\(1\)](#) to substitute Plaintiff (“Motion”).<sup>2</sup>

Because Mr. Sykes lacks standing to file his Motion, the Motion is DENIED.<sup>3</sup> However, because good cause exists to extend the deadline to file a motion to substitute Plaintiff, the deadline is extended to January 13, 2022.

**DISCUSSION**

Under [FED. R. CIV. P. 25\(a\)\(1\)](#), a motion for substitution must be filed by a “party or by the decedent’s successor or representative . . . within 90 days after service of statement notice the [party’s] death.”<sup>4</sup> Defendants filed a Statement of Notice of Death (“Notice”) regarding Plaintiff

---

<sup>1</sup> Statement of Notice of Death (“Notice”), [docket no. 71](#), filed Aug. 27, 2021.

<sup>2</sup> Motion to Extend Time for Substitution of a Party (“Motion”), [docket no. 75](#), filed Nov. 18, 2021.

<sup>3</sup> Defendants have not filed a response to Mr. Sykes’s Motion, and the time for Defendants’ response has not yet passed. However, a response is not necessary to, and could not affect, the disposition of the Motion.

<sup>4</sup> [FED. R. CIV. P. 25\(a\)\(1\)](#).

on August 27, 2021. Therefore, assuming proper service of the Notice,<sup>5</sup> a motion to substitute Plaintiff must be filed by no later than November 29, 2021.<sup>6</sup>

Mr. Sykes's Motion indicates that there have been delays in the appointment of a personal representative of Plaintiff's estate.<sup>7</sup> Plaintiff's daughters were initially appointed as personal representatives of the estate on September 27, 2021, but resigned their appointments on October 22, 2021.<sup>8</sup> Mr. Sykes subsequently petitioned the probate court to be named as the estate's successor personal representative.<sup>9</sup> But the petition remains pending and Mr. Sykes believes that it will not be ruled on for another 15 to 30 days.<sup>10</sup>

Because Plaintiff's estate does not currently have a personal representative, and will most likely not have a successor personal representative appointed in time to file a motion to substitute Plaintiff by the November 29, 2021 deadline, Mr. Sykes's Motion establishes good cause to extend the deadline.<sup>11</sup> However, Mr. Sykes's Motion is fundamentally deficient.

---

<sup>5</sup> A statement noting death must be "served on the parties as provided in Rule 5 and on nonparties as provided in [FED. R. CIV. P.] 4." *Id.* at 25(a)(3). It is unclear from the record whether Defendants served the Notice on nonparties, such as Plaintiff's estate, under Rule 4.

<sup>6</sup> Ninety days from August 27, 2021, is November 25, 2021. Because November 25, 2021, is a legal holiday, "the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday," which is November 26, 2021. *Id.* at 6(a)(1)(C). However, the court is closed on November 26, 2021. <https://www.utd.uscourts.gov/court-info/court-holidays> (last visited Nov. 23, 2021). Therefore, the deadline is extended by local rule "to the next day the court is open for business," which is November 29, 2021. *DUCivR 6-1*.

<sup>7</sup> Motion at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *FED. R. CIV. P. 6(b)(1)(A)*. "Good cause comes into play in situations in which there is no fault—excusable or otherwise." *Utah Republican Party v. Herbert*, 678 Fed. App'x 697, 700 (10th Cir. 2017). "In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant." *Id.* at 700-701. "It requires the moving party to show the deadline cannot be met despite the movant's diligent efforts." *Id.* at 701.

“As an agency relationship, the attorney-client relationship terminates upon the death of the client.”<sup>12</sup> Because Plaintiff is deceased, Mr. Sykes does not represent any party to this action.<sup>13</sup> And Mr. Sykes is not, himself, a party to this action. Therefore, Mr. Sykes lacks standing to file his Motion.<sup>14</sup> The Motion must be DENIED.

Nevertheless, Mr. Sykes’s Motion raises legitimate concerns that Plaintiff’s estate will be prejudiced if the deadline to file a motion to substitute Plaintiff is not extended.<sup>15</sup> The district court has inherent authority to “control the disposition of the causes on its docket.”<sup>16</sup> [FED. R. CIV. P. 6\(b\)\(1\)\(A\)](#) further provides that “for good cause,” the district court may extend a deadline “with or without motion or notice if the court acts . . . before the original time . . . expires.”<sup>17</sup> Under the circumstances, good cause exists to extend the deadline to file a motion to substitute Plaintiff by 45 days. Therefore, the deadline to file a motion to substitute Plaintiff under [FED. R. CIV. P. 25\(a\)\(1\)](#) is extended to January 13, 2022.

---

<sup>12</sup> *Anderson v. Eaton Corp.*, No. 2:10-cv-00905-TS, 2012 WL 6217434, \*1 (D. Utah Dec. 13, 2012); *see also Kasting v. Am. Family Mut. Ins. Co.*, 196 F.R.D. 595, 598 (D. Kan. 2000).

<sup>13</sup> *Anderson*, 2012 WL 6217434, \*1; *Kasting*, 196 F.R.D. at 598.

<sup>14</sup> *Anderson*, 2012 WL 6217434, \*1; *Kasting*, 196 F.R.D. at 598.

<sup>15</sup> Motion at 2-3.

<sup>16</sup> *Anderson*, 2012 WL 6217434, \*2 (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

<sup>17</sup> [FED. R. CIV. P. 6\(b\)\(1\)\(A\)](#).

**ORDER**

IT IS HEREBY ORDERED that Mr. Sykes's Motion<sup>18</sup> is DENIED.

IT IS FURTHER ORDERED that the deadline to file a motion to substitute Plaintiff under [FED. R. CIV. P. 25\(a\)\(1\)](#) is extended to January 13, 2022.

Signed November 23, 2021.

BY THE COURT

A handwritten signature in black ink, appearing to read 'Paul Kohler', written over a horizontal line.

Paul Kohler  
United States District Judge

---

<sup>18</sup> [Docket no. 75](#), filed Nov. 18, 2021.